

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint of
Eschelon Telecom, Inc. Against Qwest
Corporation, Inc.

FINAL RECOMMENDATION ON
MOTIONS FOR
SUMMARY DISPOSITION

On May 2, 2003, Eschelon Telecom of Minnesota, Inc. ("Eschelon") filed a Complaint with the Minnesota Public Utilities Commission ("MPUC") alleging that Qwest Corporation, Inc. ("Qwest") overcharged Eschelon for 40 amp power feeds and cageless space preparation, and also alleging that Qwest refused to provide Eschelon with all of the Direct Measure of Quality (DMOQ) billing credits Eschelon claimed were due. On May 20, 2003, Qwest filed its Answer to Eschelon's Complaint. On June 16, 2003, a briefing schedule was set for addressing the issues raised in Eschelon's Complaint.

On September 3 and 4, 2003, Eschelon and Qwest filed their initial briefs; Eschelon requested summary judgment. Eschelon, Qwest and the Department of Commerce filed reply briefs. Final submissions were received on September 29, 2003. On November 5, 2003, a Recommendation on Motions for Summary Disposition was issued.

Jason D. Topp and Joan C. Peterson, Attorneys at Law, 200 South Sixth Street, Room 395, Minneapolis, MN 55402, appeared on behalf of Qwest. Dennis D. Ahlers and Brent L. Vanderlinden, Attorneys at Law, 730 Second Avenue South, Suite 1200, Minneapolis, MN 55402-2456, appeared on behalf of Eschelon. Ginny Zeller, Assistant Attorney General, 445 Minnesota Street, Suite 1400, Saint Paul, MN 55101, appeared on behalf of the Department of Commerce ("Department").

In the Recommendation on Motions for Summary Disposition, the parties were given the opportunity to notify the Administrative Law Judge by November 18, 2003 if the amount of the refund due Eschelon for rates set for 40 amp power service and cageless space preparation were in dispute. The parties have notified the Administrative Law Judge that they have agreed upon the refund amount and no hearing is necessary to address that issue. There are no remaining issues pending.

IT IS HEREBY RECOMMENDED:

1. That Eschelon's Motion for Summary Judgment be granted, in part. Eschelon should receive the benefit of rates set by the Commission for 40 amp power service and cageless space preparation.
2. That Eschelon's Motion for Summary Judgment be denied in part. Eschelon should not receive DMOQ credit for Qwest's billings for UNE-E.
3. That the Protective Order issued July 10, 2003 remain in effect.

Dated this 19th day of November, 2003.

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, any party adversely affected by this Report, may file exceptions to it within 20 days of the mailing date hereof. Exceptions should be filed with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 - 7th Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply. An original and 15 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if held.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that the recommendation has no legal effect unless expressly adopted by the Commission as its final order.